# RECENT IMPORTANT DECISIONS.

ADOPTION—RIGHT OF PARTY NOT LEGALLY ADOPTED TO INHERIT.—The plaintiff claims the right to inherit the entire estate of X, by whom she had been virtually adopted under an agreement between X and plaintiff's natural mother, though no statutory adoption had ever taken place. *Held,* a parol promise to adopt the child of another, followed by a virtual adoption, and acted upon by both parties during the promisor's life, may be enforced upon the death of the promisor by adjudging the child to be entitled to the property of the deceased promisor. *Crawford et al.* v. *Wilson,* (Ga., 1913), 78 S. E. 30.

At first glance this case does not seem to harmonize with the statements of text-writers, such as: "If any substantial requirement of the statute is omitted the proceedings are ineffectual and the legal relationship of the child remains unchanged." (PECK, DOM. REL. 248), and "As the right to adopt depends upon the statute its provisions must be strictly complied with." (TIFFANY, DOM. REL. 243.) These propositions are undoubtedly true where the party claims to inherit by reason of having been legally adopted. They are not correct when applied to cases like the principal case, where the party claims by reason of an agreement of adoption that has been fully executed on the part of the child. In such cases the equities flowing from the agreement that has been acted upon are enforced. This of course does not interfere with the right of the alleged adopting parents to dispose of their property by will. *Healey* v. *Simpson,* 113 Mo. 340, 20 S. W. 881; *Wright* v. *Wright,* 99 Mich. 170, 58 N. W. 54, 23 L. R. A. 196; *Chehak* v. *Battles,* 133 Iowa 107, 8 L. R. A. (N. S.) 1130, 110 N. W. 330; *Burns* v. *Smith,* 21 Mont. 251, 69 Am. St. Rep. 653; *Flannigan* v. *Howard,* 200 Ill. 396, 93 Am. St. Rep. 201, 59 L. R. A. 664. The following cases seem to be in conflict with the principal case: *Davis* v. *Jones,* 94 Ky. 320, 42 Am. St. Rep. 360, 22 S. W. 331; *Gill* v. *Sullivan,* 55 Iowa 341; *Tyler* v. *Reynolds,* 53 Iowa 146.

ATTACHMENT—PROPERTY IN CUSTODIA LEGIS.—A sheriff, having property in his hands by virtue of an attachment and a levy thereunder, consented to a levy by a constable on complainant's writ of attachment issued out of another court, but retained possession of the property so levied upon. Complainant obtained judgment and an order for the sale of the property, and on the sheriff's refusal to turn the same over to the constable, filed a bill to have the property applied in satisfaction of his claim. *Held,* the constable's attempted levy was void. *Remington Typewriter Co.* v. *Hall,* (Ala., 1913), 63 South. 74.

It is a general rule that property in custodia legis can not be attached. *Brewer* v. *Hutton,* 45 W. Va. 106, 72 Am. St. Rep. 804; *McLemore* v. *Benbow,* 19 Ala. 76; *Curtis* v. *Ford,* 78 Texas 262, 10 L. R. A. 529; See 11 MICH. L. REV. 599. In numerous cases this rule has been applied to various classes of legal custodians, among others to sheriffs as in the principal case; ROOD, GARNISHMENT, § 27; *Turner* v. *Gibson,* (Texas) 151 S. W. 793. The reason for

this doctrine lies in the fact that the officer holding the property is the mere "hand of the court; his possession is the possession of the court" to whose orders and by whose judgments he is bound. To permit the officer of another court to take that lawful possession of the property which is essential to a valid levy would be to permit an unwarranted interference of one tribunal with the possessions and over the representatives of another, and would lead to serious collisions and conflicts of jurisdiction. *In re Cunningham,* Fed. Cas. 3478; *Hurst* v. *Saginaw Circuit Judge,* 114 Mich. 116, 68 Am. St. Rep. 465, 47 L. R. A. 345; *Williams* v. *Dismukes,* 106 Ala. 402, 17 So. 621. It follows logically, therefore, that the assent of the sheriff to the levy should not militate against the applicability of the general rule and so it was held in the principal case. To permit otherwise would in many cases divert the property from the very end or purpose for which possession had been taken, and this at the instance of an officer whose powers are ministerial and not judicial, and who would thereby subject himself not only to liability on his official bond but to punishment for contempt. See *Payne* v. *Drewe,* 4 East 523; *Hartleib* v. *McLane,* 44 Pa. St. 510, 84 Am. Dec. 464; 35 Cyc. 1681, 1924.

Attorney and Client—Attorney's Lien.—Where the statute provides that an attorney shall have a lien on the judgment superior to all but tax-liens, *Held,* that the attorney's interest in the pending suit could not be defeated by any settlement made without his consent. *Payton* v. *Wheeler,* (Ga. App., 1913) 79 S. E. 81. But even after judgment the lien cannot be impounded and subjected to an indebtedness of the attorney by garnishing the judgment-debtor. *Modlin* v. *Smith,* (Ga. App., 1913) 79 S. E. 82.

It is well settled that the attorney or solicitor has a charging lien for compensation for his services on the proceeds of the judgment obtained by him. *Read* v. *Dupper,* 6 T. R. 361; Weeks, Attorney and Client (2nd Ed.) § 370; *Stewart* v. *Flowers,* 44 Miss. 513, 7 Am. Rep. 707. This lien, unknown to the common law as was the possessory lien, now exists in most jurisdictions by force of statute or judicial legislation. 4 Cyc. 1004; *Andrew* v. *Morse,* 12 Conn. 444, 31 Am. Dec. 752. In general it is regarded as in the nature of an equitable assignment of the judgment to the extent of the services rendered. *Terney* v. *Wilson,* 45 N. J. L. 282; *Wright* v. *Wright,* 70 N. Y. 98; *Hobson* v. *Watson,* 34 Me. 20, 56 Am. Dec. 632. It gives the attorney an interest which is assignable, and is superior to the rights of third persons whose claims arise subsequent to the judgment. *Day* v. *Bowman,* 109 Ind. 383; *Sibley* v. *County of Pine,* 31 Minn. 201; *Hargett* v. *McCadden,* 107 Ga. 773, 33 S. E. 666; Jones, Liens, § 226 and cases cited. In some jurisdictions it is held superior to the rights of the adverse party to a set-off. *Roberts* v. *Mitchell,* 94 Tenn. 277, 29 L. R. A. 705; *Diehl* v. *Friester,* 37 Oh. St. 473; *Perry* v. *Chester,* 53 N. Y. 240; but contra *Nat. Bank* v. *Eyre,* 8 Fed. 733. Again it is such an interest as can not be defeated by any settlement between the client and his opponent. *Ex parte Lehman,* 59 Ala. 631; *Coughlin* v. *N. Y. C. H. R.,* 71 N. Y. 443, 27 Am. Rep. 75. Especially if the settlement is fraudulent. *G. R. & I. Co.* v. *Cheboygan Circuit Judge,* 161 Mich. 181, 126 N. W. 56, 137 Am. St. Rep. 495. And this has been held even in those states